

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 270.

SILAS PICKETT, PLAINTIFF IN ERROR,

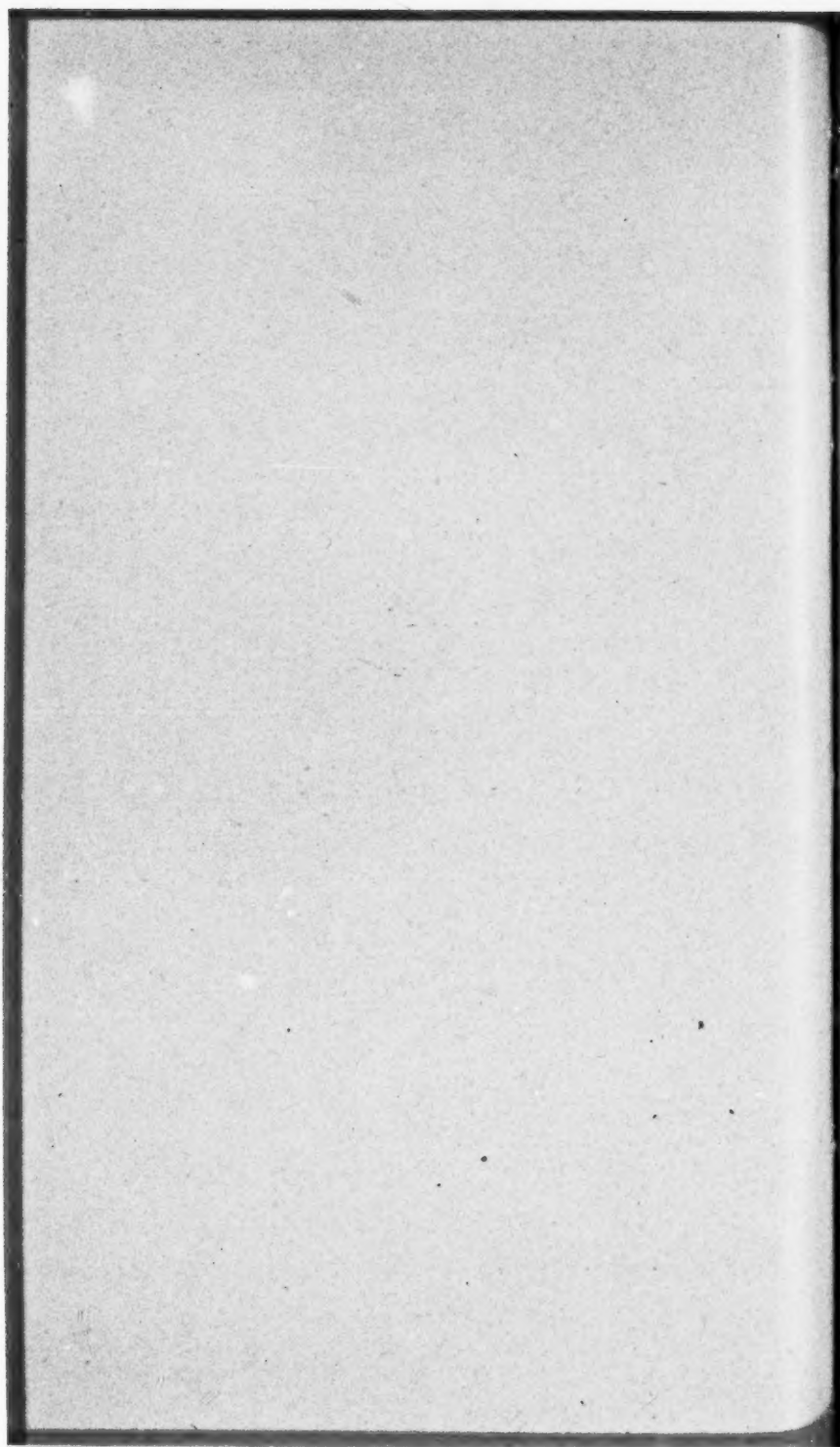
VS.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF OKLAHOMA.

FILED OCTOBER 16, 1908.

(21375)



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happened, to the great damage of the said Silas Pickett, defendant, as by his complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the said record and proceedings aforesaid at the city of Washington, and filed in the office of the clerk of the Supreme Court of the United States on or before the 9th day of September, 1908, to the end that the record and proceedings aforesaid being inspected, the Supreme Court of the United States may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States, should be done.

Witness, the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 10th day of August, in the year of our Lord one thousand nine hundred and eight.

4 Issued at office in the city of Guthrie, with the seal of the Circuit Court of the United States for the Western District of Oklahoma, dated as aforesaid.

[SEAL.]

HARRY L. FINLEY,
*Clerk of the Circuit Court of the United States
for the Western District of Oklahoma.*

Allowed by—

JOHN H. COTTEREL,
*Judge of the United States District Court in and for
the Western District of Oklahoma, and Judge of said
Circuit Court, presiding as trial Judge in said cause.*

5 *Return to writ.*

UNITED STATES OF AMERICA.

Western District of Oklahoma, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said Circuit Court, at office in the city of Guthrie, this 5th day of September, A. D. 1908.

[SEAL.]

HARRY L. FINLEY,
Clerk of said Court.

(Indorsed:) Writ of error. Circuit Court of the United States, Western District of Oklahoma. Clerk's office. Filed August 10th, 1908. Harry L. Finley, clerk. , deputy.

6

Transcript.

UNITED STATES OF AMERICA,

Western District of Oklahoma, ss:

At a term of the District Court of the United States for the Western District of Oklahoma begun and held at the city of Guthrie, in said district, on the sixth day of January, 1908, proceedings were had, and appear of record, in words and figures following, to wit:

Return of grand jury.

SATURDAY, *February 8th, 1908.*

Now, on this 8th day of February, 1908, the grand jury of the United States for the Western District of Oklahoma returned into court the following indictments, each of which is endorsed a "True bill: Henry Herwig, foreman grand jury," and is filed, to wit:

An indictment numbered 149 against Silas Pickett, alias Papa Cy, and Marble Eye, for murder.

And thereafter and on the 17th day of February, 1908, the following proceedings were had, to wit:

UNITED STATES

vs.

SILAS PICKETT AND MARBLE EYE.

No. 149.

Now, on this 17th day of February, 1908, it is ordered, adjudged, and decreed by the court that the indictment presented to the court in this cause be, and the same is hereby, ordered remitted to the next session of the United States Circuit Court for the Western District of Oklahoma for further proceedings; and

It is further ordered that the clerk of this court immediately transmit to the clerk of said United States Circuit Court for the Western District of Oklahoma the indictment and all files herein, together with a certified copy of this order.

7

UNITED STATES OF AMERICA,

Western District of Oklahoma, ss:

I, C. E. Hunter, clerk of the District Court of the United States for the Western District of Oklahoma, hereby certify that the foregoing is a true, correct, full, and complete copy of the return of the grand jury and the order of remitting said cause to the United States Circuit Court for the Western District of Oklahoma, in the case of United States vs. Silas Pickett and Marble Eye, as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Guthrie, in said district, this 19th day of February, 1908.

[Seal of District Court
for Western District of
Oklahoma.]

C. E. HUNTER, *Clerk,*
By A. C. DOLDE, *Deputy.*

(Endorsed:) No. 7. United States vs. Silas Pickett, alias Papa Cy, and Marble Eye. Transcript. Circuit Court of the United States, Western District of Oklahoma. Clerk's office. Filed Feb. 19th, 1908. Harry L. Finley, clerk.

8

Indictment from the U. S. District Court.

UNITED STATES OF AMERICA,

Western District of Oklahoma, ss:

In the District Court of the United States within and for the Western District of Oklahoma.

Indictment for murder.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

SILAS PICKETT, ALIAS PAPA CY, AND MARBLE EYE,
whose true name is to the grand jurors unknown, defendants.

At the January term of the District Court of the United States within and for the Western District of Oklahoma, begun and held at the city of Guthrie, in said district, on the sixth day of January, in the year of our Lord, one thousand nine hundred and eight.

The grand jurors of the United States of America, within and for said district, having been duly impaneled, sworn, and charged to inquire into and true presentment make of all public offenses against the laws of the United States of America, committed or triable within said district, upon their oaths aforesaid, in the name and by the authority of the United States of America, do find and present:

That on, to wit, the fourteenth day of October, in the year of our Lord, one thousand nine hundred and seven, in the Indian country, in said district, and within the jurisdiction of said court, within
9 the Eighth Judicial Circuit of the United States and within the jurisdiction of the Circuit Court of the United States for the Western District of the State of Oklahoma, to wit, at and within that part of the Osage Indian Reservation, in the former Territory of Oklahoma, then and there lying and being outside the towns and town sites of Bigheart, Fairfax, Foraker, Hominy and Pawhuska, on said Osage Indian Reservation, and then and there lying and being outside the following sections of land, in said Osage Indian Reservation, to wit, section thirteen, in township twenty-four north, of range five east; sections fifteen and twenty-two, in township twenty-four north, of range six east; section thirty-four, in township twenty-five north, of range seven east; section three, in township twenty-four north, of range seven east; and section eight, in township twenty-five north, of range nine east, said part of said Osage Indian Reservation then and there lying and being outside of said towns and town sites and outside of said sections of land, being then and there

Indian country and under the sole and exclusive jurisdiction of the United States, and not within the jurisdiction of any State, Silas Pickett, alias Papa Cy, and Marble Eye, whose true name is to the grand jurors unknown but who was commonly known as Marble Eye, negroes and not Indians, and not members of the Osage tribe of Indians residing upon the Osage Indian Reservation, then and there being in the Indian country aforesaid, within said District, did then and there, by force and arms, with a certain revolving pistol then and there loaded and charged with gunpowder and leaden balls, and then and there had and held in the hands of them the said Silas Pickett, alias Papa Cy, and the said Marble Eye, to wit, the hands of the said Silas Pickett, alias Papa Cy, and with a certain club, to wit, a stick of wood of the breadth of two inches and of the thickness of

two inches and of the length of three feet, then and there had
10 and held in the hands of them the said Silas Pickett, alias

Papa Cy, and the said Marble Eye, to wit, in the hands of the said Marble Eye, deliberately, premeditatedly, wilfully, unlawfully, feloniously, of and with malice aforethought make an assault upon one "Walter the Kid," a human being, then and there being, and in the peace of the United States, whose true name is to the grand jurors aforesaid unknown but who was commonly known as "Walter the Kid," with the intent and purpose then and there of them the said Silas Pickett, alias Papa Cy, and the said Marble Eye to kill and murder him the said "Walter the Kid;" and they the said Silas Pickett, alias Papa Cy, and said Marble Eye, did then and there, with the intent and purpose aforesaid, wilfully, unlawfully, deliberately, premeditatedly, feloniously, and of and with their malice aforethought, by force of the gunpowder aforesaid, shoot off and discharge said revolving pistol aforesaid, then and there loaded and charged, as aforesaid, and then and there had and held in the hands of him the said Silas Pickett, alias Papa Cy, as aforesaid, at, towards and against the body of him the said "Walter the Kid," then and there striking, penetrating, and wounding him the said "Walter the Kid," in and upon the leg of him the said "Walter the Kid," with the leaden balls aforesaid so as aforesaid shot off and discharged from the revolving pistol, as aforesaid, then and there inflicting upon and giving to him the said "Walter the Kid" one mortal wound; and they the said Silas Pickett, alias Papa Cy, and the said Marble Eye, did then and there, with the intent and purpose aforesaid, wilfully, unlawfully, deliberately, premeditatedly, and feloniously, and of and with their malice aforethought, beat, strike, wound and bruise him, the said "Walter the Kid" with the said revolving pistol and the said club, then and there had and held in the hands of them the said Silas Pickett, alias Papa Cy, and the said Marble Eye as aforesaid, in and upon the head, face and body of him the said
11 "Walter the Kid," then and there, by such beating, striking, wounding and bruising, as aforesaid, inflicting upon and giving to him the said "Walter the Kid," several mortal wounds; of which said mortal wounds, so as aforesaid by them the said Silas

Pickett, alias Papa Cy, and Marble Eye, then and there inflicted upon and given to him the said "Walter the Kid," by the shooting, striking, penetrating and wounding of him the said "Walter the Kid" as aforesaid, with the leaden balls aforesaid, so as aforesaid shot off and discharged from the revolving pistol aforesaid, and by the beating, striking, wounding and bruising of him the said "Walter the Kid," as aforesaid, with the said revolving pistol and the club aforesaid, which said mortal wounds cannot be more particularly described by the grand jury, he the said "Walter the Kid" then and there instantly died.

And the grand jurors aforesaid, upon their oaths aforesaid, do say that they the said Silas Pickett, alias Papa Cy and Marble Eye, at the time and place aforesaid, in the Indian country aforesaid, within the jurisdiction of the United States District and Circuit Courts for the Western District of the State of Oklahoma, in the manner and form aforesaid, and by the means and force aforesaid, and with the intent and purpose aforesaid, did wilfully, unlawfully, deliberately, premeditatedly, feloniously, and of their malice aforethought, kill and murder him the said "Walter the Kid," contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

JOHN EMBRY,

United States Attorney.

(Endorsed on back:) No. 7, No. 149. United States District Court, Western District of Oklahoma. The United States vs. Silas

Pickett, alias Papa Cy and Marble Eye, whose true name is to the grand jurors unknown. Indictment for murder. A true bill. Henry Herwig, foreman grand jury. Filed Feby. 8th, 1908. C. E. Hunter, clerk. John Embry, U. S. attorney. Circuit Court of the United States, Western District of Oklahoma. Clerk's office. Filed Feb. 19th, 1908. Harry L. Finley, clerk.

(Further endorsed:) Back or cover of indictment with plea and judgment. Witnesses for the United States. Carey Howard, Andy Potete, Geo. Rush, Anna Logan, Millie Freeman.

13 *Motion to set aside the indictment.*

UNITED STATES OF AMERICA,

Western District of Oklahoma:

In the Circuit Court of the United States for the Western District of Oklahoma.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

SILAS PICKETT, DEFENDANT.

No. 7.

Motion to set aside the indictment.

Comes now the above-named defendant — by and through his attorneys, Leahy and Scott, and move the court to set aside the indictment herein for the reasons following, to wit:

First. This court is without jurisdiction to hear and determine this cause.

Second. The grand jury that returned said indictments was not a grand jury drawn, summoned, empaneled and charged as required by law.

LEAHY & SCOTT,

Attorneys for defendant.

(Endorsed:) In the Circuit Court, Western District of Oklahoma, United States of America, plaintiff, vs. Silas Pickett, deft. Motion to set aside indictment. Circuit Court of the United States, Western District of Oklahoma. Clerk's office. Filed Feb. 28, 1908. Harry L. Finley, clerk. Leahy & Scott, att'ys for defendant.

14

Demurrer to indictment.

UNITED STATES OF AMERICA,

Western District of Oklahoma;

In the Circuit Court of the United States for the Western District of Oklahoma,

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

SILAS PICKETT, DEFENDANT.

No. 7.

Demurrer.

Comes now the defendant by and through his attorneys, Leahy and Scott, and demurs to the bill of indictment in this case for the reasons following, to wit:

First. That the said indictment shows upon its face that the court had no jurisdiction to find said bill of indictment at the time same is purported to have been found.

Second. That the court has no jurisdiction over the person of the defendant or over the subject matter charged against the defendant.

Third. That said indictment does not contain fact sufficient to constitute a public offense against the laws of the United States of America.

Fourth. That this court is without jurisdiction of the offenses charged in said indictment.

15 Fifth. That the offenses charged in said indictment are not set out in such clear, unambiguous language as to apprise the defendant of the crime charged.

LEAHY & SCOTT,

Attorneys for defendant.

(Endorsed:) In the Circuit Court Western Dist. of Oklahoma, United States of America, plaintiff vs. Silas Pickett, deft. Demurrer. Circuit Court of the United States Western District of Oklahoma. Clerk's office. Filed Feb. 28, 1908. Harry L. Finley, clerk. Leahy & Scott, att'ys for defendant.

- 16 *Journal entry.—Arraignment, plea, order for temporary commitment, etc.*

UNITED STATES, PLAINTIFF,

vs.

SILAS PICKETT, ALIAS PAPA CY, DEFENDANT.

Now on this February 28, 1908 comes the plaintiff by John W. Scothorn, assistant United States attorney, and comes also the defendant Silas Pickett, alias Papa Cy, into open court in person and by his attorneys, Leahy & Scott. Whereupon said defendant is brought before the bar of the court and is by the court advised of his rights to have counsel to defend him in this action, and the defendant answering says that Leahy & Scott are his attorneys, and thereupon said defendant is arraigned in open court, the said assistant United States attorney reading the indictment herein to said defendant. Whereupon the court orders said defendant to plead to said indictment, and thereupon by leave of court, defendant files his motion to quash and set aside the indictment. Defendant states that he does not desire to introduce evidence in support of said motion, and the court having heard said motion and the argument of counsel thereon, and being fully advised in the premises finds that said motion should be overruled.

It is, therefore, by the court considered, ordered, adjudged, and decreed that defendant's said motion to quash and set aside the indictment herein, be, and the same is hereby, overruled, to which finding, ruling, and order the said defendant duly excepts, and exceptions are allowed by the court.

- 17 Whereupon the court orders the defendant to plead over and further to the indictment, and thereupon by leave of court said defendant files his demurrer to the indictment herein, and the court having heard said demurrer and the argument of counsel thereon, and being fully advised in the premises, finds that said demurrer should be overruled.

It is, therefore, by the court considered, ordered, and adjudged that said defendant's demurrer to the indictment herein be, and the same is hereby, overruled; to which ruling, finding, and order of the court defendant duly excepts, and exceptions are allowed by the court.

Whereupon the court orders the said defendant to plead over and further to the indictment herein, and thereupon the defendant enters his plea of not guilty to said indictment, and which plea of not guilty is, by order of the court, by the clerk entered upon the minutes of the court.

It is further ordered by the court that this cause be, and the same is hereby, continued until the next regular term of this court, to be begun and held at Oklahoma City on March 2, 1908.

It is further ordered by the court that the clerk furnish defendant with a certified copy of the indictment herein, and charge the same as costs to the United States.

It is further ordered by the court that said defendant be remanded to the custody of the United States marshal in the federal jail at Guthrie, Oklahoma, and that the clerk issue a temporary commitment for the defendant herein and place said commitment in the hands of the United States marshal of the western district of Oklahoma for service.

18 *Journal entry.—Order vacating order overruling motion to quash indictment.*

On Saturday, the 29th day of February, 1908, proceedings were had and appear of record in this cause as follows, to wit:

THE UNITED STATES, PLAINTIFF,	}
vs.	
SILAS PICKETT, ALIAS PAPA CY, DEFENDANT.	

Now, on this February 29, 1908, comes the United States, plaintiff, by John Embry, United States attorney for the western district of Oklahoma, and comes also the defendant, Silas Pickett, alias Papa Cy, into open court in person and by his counsel, Leahy & Scott.

Whereupon the court, being fully advised in the premises, orders that the order heretofore, to wit, on February 28, 1908, in this case, overruling defendant's motion to quash and set aside the indictment herein, be vacated and set aside. And now by leave of court, the United States, by said United States attorney, files answer to said motion of defendant to quash the indictment herein. Defendant is now by the court granted leave to introduce evidence in support of his said motion, and defendant, by his said counsel, declines to introduce evidence in support of his said motion. And thereupon the court, having heard said motion and answer thereto, and the argument of counsel thereon, and being fully advised in the premises, finds that said motion should be overruled.

It is, therefore, by the court considered, ordered, and adjudged that said motion of said defendant to quash and set aside the indictment herein be, and the same is hereby, overruled; to which finding, ruling, and order of the court defendant duly excepts, and exceptions are allowed by the court.

19 Whereupon the court orders the defendant to plead over and further to said indictment herein, and thereupon defendant presents his demurrer to the said indictment, and the court, having heard said demurrer and the argument of counsel thereon, and having considered the same, and being fully advised in the premises, finds that said demurrer should be overruled.

It is therefore by the court considered, ordered, and adjudged that defendant's said demurrer to the indictment herein be and the same is hereby overruled, to which finding, ruling, and order of the court defendant duly excepts and exceptions are allowed by the

court. Defendant, being ordered to plead over and further, enters his plea of not guilty to the indictment herein.

It is further ordered by the court that this cause be and the same is hereby continued until the next regular term of this court, to be begun and held at Oklahoma City, Oklahoma, on March 2, 1908.

20

Answer to motion.

In the Circuit Court of the United States, within and for the Western District of Oklahoma.

Answer to motion.

THE UNITED STATES, PLAINTIFF,

vs.

SILAS PICKETT, ALIAS PAPA CY, AND MARBLE EYE, DEFENDANTS. }

The plaintiff, answering the motion of defendant to quash and set aside the indictment herein, denies each and every allegation and averment in said motion contained.

JOHN EMBRY,

United States Attorney.

(Endorsed:) No. 7. Answer. U. S. vs. Silas Pickett et al. Circuit Court of the United States, Western District of Oklahoma. Clerk office. Filed Feb. 29, 1908. Harry L. Finley, clerk.

21

Journal entry.

On Tuesday, March 17th, 1908, proceedings were had and appear of record in this cause as follows, to wit:

UNITED STATES

vs.

SILAS PICKETT, ALIAS PAPA CY. }

Now, on this March 17th, 1908, the United States appears by John Embry, United States district attorney for the Western District of Oklahoma, and defendant, Silas Pickett, alias Papa Cy, appears in open court in his own proper person and by S. H. Harris, who appears for Leahy & Scott, attorneys for defendant.

Defendant states to the court that he has not been furnished with a certified copy of the indictment herein, and thereupon the court orders the clerk of this court to make, certify under the seal of this court, and deliver to defendant a copy of the indictment in this action, and to charge the same to the United States as costs.

It is further ordered by the court that this cause be set for trial for nine o'clock a. m. on April first, 1908.

22 *Motion for continuance and affidavit in support of motion.*

In the Circuit Court of the United States of America, Eighth Judicial Circuit, Western District of Oklahoma.

Motion for continuance.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

SILAS PICKETT, ALIAS PAPA CY, DEFENDANT.

Comes now the above-named defendant, by his attorneys Leahy & Scott, and moves the court to grant a continuance in this cause, for the reasons following, to wit:

That there are material witnesses in behalf of this defendant whose presence at this term of the court defendant is unable to procure with due diligence, and for want of sufficient means to pay the expense of subpoena for them, and their mileage and per diem in attending said court.

In support of said motion, defendant offers the affidavit hereto attached.

LEAHY & SCOTT,

Attys for Defendants.

23 STATE OF OKLAHOMA,

County of Oklahoma, ss:

Silas Pickett, being first duly sworn, on his oath says that he is the defendant in the case of the United States of America *vs.* Silas Pickett, alias Papa Cy, pending in the Circuit Court of the United States for the Western District of Oklahoma; that he can not safely proceed with the trial of this cause without the presence as witnesses in his behalf of Charles Ceasar and Henry Hodge, or without their depositions.

Defendant says that he is informed and believes that Charles Ceasar, if present, would testify as follows:

My name is Charles Ceasar.

I am over the age of twenty-one years.

My residence is Lawrence, Nebraska.

I am well acquainted with Silas Pickett, the defendant in this cause, and have been for a number of years.

I knew Walter the Kid at the time he was shot by the said Silas Pickett.

I was present at the time the difficulty arose in which Walter the Kid was shot.

I saw Walter the Kid with a rifle in his hands going in the direction of Silas Pickett.

I heard a woman call to Silas Pickett, and say, "Look out, Si, or Walter will shoot you."

I saw Silas Pickett with a gun in his hand, and heard him call to Walter the Kid and say, "Put that gun down. Go back. Don't come this way, or I'll shoot you."

24 Walter the Kid made no reply to what Silas Pickett said, but continued walking towards Silas Pickett, and working with the breech of his gun, endeavoring to extract a shell from it.

Silas Pickett raised his pistol and fired. When he did so, Walter the Kid dropped the gun he had and broke and ran to where there was some hay, and lay down on the hay. Silas Pickett came over to where he was; and at that time a number of persons were there.

Walter the Kid was shot through the fleshy part of the thigh, and was bleeding profusely.

Silas Pickett helped to care for the wounded man and did all he could for him until he died.

When Silas Pickett came over to where Walter the Kid was, he said to Walter the Kid, "You made me shoot you to save my own life. Why did you come after me with that gun? Why didn't you drop it when I told you to?" To which Walter the Kid answered, "I know I was the cause of it all; and if you had not shot me I would have shot you."

Walter the Kid died some time during the same day, and after his death Silas Pickett left the camp.

Silas Pickett was a laborer working on the right of way in the construction of the Midland Valley road through the Osage Indian Reservation in Oklahoma. I was also working with the same outfit.

Walter the Kid was considered in the nature of a loafer about the camp, and only worked about one day in a week. He was there only a few weeks at the time he was shot.

Silas Pickett left the camp and went away, after being advised to do so by other persons who were working in the construction of the same road, who told him they thought he had better leave, as he was in a strange country and among strangers, and he would probably have to lie in jail an indefinite period before he could get a trial unless he did so.

25 Defendant says that if Henry Hodge were present he is informed and believes he would testify as follows:

My name is Henry Hodge.

I am over the age of twenty-one years and reside at Lawrence, Nebraska.

I am well acquainted with Silas Pickett, and have been for a number of years.

I knew Walter the Kid at the time of his death.

I was present at the time said difficulty arose and saw Silas Pickett fire the shot that struck Walter the Kid. Prior to the firing of the shot Silas Pickett was in the neighborhood of the tent where he

staid, and Walter the Kid was at a tent kept and maintained by a woman.

I saw Walter the Kid go out of the tent with a rifle in his hands, and heard the woman call to Silas Pickett and say, "Look out, or Walter will kill you," or words to that effect. At that time Walter the Kid was going in the direction of Silas Pickett.

I saw Silas Pickett go into his tent and out, and when he came out he had a pistol in his hand. Walter the Kid was still advancing towards Silas Pickett, and Silas spoke to him and said, "Drop that gun. What are you going to do? Stop, or I'll shoot you," or words to that effect.

Walter the Kid continued advancing towards Silas Pickett and was working with the breech of his gun as though he were endeavoring to extract a shell.

Silas Pickett fired and Walter the Kid dropped his gun and broke and ran to where there was some hay, and lay down on the hay. He was wounded in the fleshy part of one of the thighs and was bleeding profusely. There was only one shot fired. Silas Pickett came over to where Walter the Kid was and assisted in taking care of him until he died.

26 Silas Pickett said to him, "You made me shoot you to save my own life. Why did you do it?" Walter the Kid replied, "I know I was to blame. If you had not shot me I would have shot you."

After Walter the Kid died Silas Pickett left the camp and went away. He was advised to go by other persons working there who said to him that he was among strangers and in a strange country, and that if he were arrested he would probably have to lie in jail for a long time before he could get a trial, and that it would probably be better for him to go away.

This is all that was done by Silas Pickett in the trouble with Walter the Kid.

Defendant further says that he believes that if this case is continued until the next term of court that he will be able, by the assistance of his relatives and friends, to raise sufficient money to procure the attendance of said witnesses at his trial; that he has been assured by two of his relatives that they will be able to assist him by raising sufficient means to procure the attendance of these witnesses or to take their depositions within the next sixty days, but they are now unable to do so, and have been unable to do so on account of the death of his mother, which occurred within the last year.

Defendant further says that the facts of the testimony, which he is informed and believes that the above-named witnesses will give, as set out by him, is true, and that if he is permitted to obtain their depositions or procure their attendance he will be able to show the same to the satisfaction of the court.

Defendant says that the only reason he has not said witnesses in attendance at this court and why he has not procured their depositions is because of the lack of sufficient means, and he has been actually unable to do so.

SILAS PICKETT.

27 Subscribed and sworn to before me this 7th day of April, 1908.

[Seal of notary public,
Oklahoma County.]

EDMOND E. REARDON,
Notary Public.

My commission expires Sept. 11, 1909.

(Endorsed:) No. 7. United States vs. Silas Pickett, alias Papa Cy. Motion of defendant for continuance. Filed April 7, 1908. Harry L. Finley, clerk.

28 *Journal entry: Motion for continuance.*

Now on Tuesday, the 7th day of April, 1908, proceedings were had and appear of record in this cause as follows, to wit:

UNITED STATES	} 7.
<i>vs.</i>	
SILAS PICKETT, ALIAS PAPA CY.	

Now on this April 7, 1908, this cause comes on for hearing on motion and application of the defendant for a continuance of this cause, the United States appearing by John Embry, United States district attorney, and the defendant appearing in person and by counsel T. J. Leahy; and said motion is presented by counsel and is by the court continued for further hearing, and the district attorney is ordered to wire to postmaster at Lawrence, Nebraska, for information as to witnesses named in defendant's application for a continuance.

29 *Journal entry.*

Now on Wednesday, April 15th, 1908, proceedings were had and appear of record in this cause as follows, to wit:

UNITED STATES,	} 7.
<i>vs.</i>	
SILAS PICKETT, ALIAS PAPA CY.	

Ordered by the court that this cause remain on call until 10 o'clock to-morrow morning to enable defendant to prepare and file an application for continuance.

30

Motion of deft. for continuance.

In the Circuit Court of the United States of America, Eighth Judicial Circuit, Western District of Oklahoma.

Motion for continuance.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

SILAS PICKETT, ALIAS PAPA CY, DEFENDANT. }

Comes now the above-named defendant, by his attorney, Leahy & Scott, and moves the court to grant a continuance in this cause for the reasons following, to wit:

That Henry Hodge and Charles Caesar are material witnesses in behalf of this defendant, whose presence at this term of the court defendant is unable to procure with due diligence, and for want of sufficient means to pay the expense of subpoena for them, and their mileage and per diem in attending said court.

In support of said motion defendant offers the affidavit hereto attached.

LEAHY & SCOTT,

Attorneys for Defendant.

31 STATE OF OKLAHOMA,

County of Oklahoma, ss:

Silas Pickett, being first duly sworn on his oath, says that he is the defendant in the case of the United States of America vs. Silas Pickett, alias Papa Cy, pending in the Circuit Court of the United States for the Western District of Oklahoma: that he can not safely proceed with the trial of this cause without the presence as witnesses in his behalf of Charles Caesar and Henry Hodge, or without their depositions.

Defendant says that he is informed and believes that Charles Caesar, if present, would testify as follows:

My name is Charles Caesar.

I am over the age of twenty-one years.

I am well acquainted with Silas Pickett, the defendant in this cause, and have been for a number of years.

I knew Walter the Kid at the time he was shot by the said Silas Pickett. I was present at the time the difficulty arose in which Walter the Kid was shot.

I saw Walter the Kid with a rifle in his hands going in the direction of Silas Pickett.

I heard a woman call to Silas Pickett and say, "Look out, Si, or Walter will shoot you."

I saw Silas Pickett with a gun in his hand, and heard him call to Walter the Kid and say, "Put that gun down. Go back. Don't come this way, or I'll shoot you."

Walter the Kid made no reply to what Silas Pickett said, but continued walking towards Silas Pickett and working with the breech of his gun, endeavoring to extract a shell from it.

32 Silas Pickett raised his pistol and fired. When he did so,

Walter the Kid dropped the gun he had and broke and ran to where there was some hay and lay down on the hay. Silas Pickett went over to where he was, and at that time a number of persons were there.

Walter the Kid was shot through the fleshy part of the thigh and was bleeding profusely.

Silas Pickett helped to care for the wounded man and did all he could for him until he died.

When Silas Pickett came over to where Walter the Kid was, he said to Walter the Kid, "You made me shoot you to save my own life. Why did you come after me with that gun? Why didn't you drop it when I told you to?" To which Walter the Kid answered, "I know I was the cause of it all, and if you had not shot me I would have shot you."

Walter the Kid died some time during the same day, and after his death Silas Pickett left the camp.

Silas Pickett was a laborer, working on the right of way in the construction of Midland Valley road through the Osage Indian Reservation in Oklahoma. I was also working with the same outfit.

Walter the Kid was considered in the nature of a loafer about the camp and only worked about one day in a week. He was there only a few weeks at the time he was shot.

Silas Pickett left the camp and went away, after being advised to do so by other persons who were working in the construction of the same road, who told him they thought he had better leave, as he was in a strange country and among strangers, and he would probably have to lie in jail an indefinite period before he could get a trial unless he did so.

33 Defendant says that if Henry Hodge were present he is informed and believes he would testify as follows:

My name is Henry Hodge.

I am over the age of twenty-one years.

I am well acquainted with Silas Pickett and have been for a number of years.

I knew Walter the Kid at the time of his death.

I was present at the time said difficulty arose and saw Silas Pickett fire the shot that struck Walter the Kid. Prior to the firing of the shot Silas Pickett was in the neighborhood of the tent where he stood, and Walter the Kid was at a tent kept and maintained by a woman.

I saw Walter the Kid go out of the tent with a rifle in his hands and heard a woman call to Silas Pickett and say, "Look out, or Walter will kill you," or words to that effect. At that time Walter the Kid was going in the direction of Silas Pickett.

I saw Silas Pickett go into his tent and out, and when he came out he had a pistol in his hand. Walter the Kid was still advancing towards Silas Pickett, and Silas spoke to him and said, "Drop that gun. What are you going to do? Stop, or I'll shoot you," or words to that effect.

Walter the Kid continued advancing towards Silas Pickett, and was working with the breech of his gun as though he were endeavoring to extract a shell.

Silas Pickett fired and Walter the Kid dropped his gun and broke and ran to where there was some hay and lay down on the hay. He was wounded in the fleshy part of one of the thighs and was bleeding profusely. There was only one shot fired. Silas Pickett came over to where Walter the Kid was and assisted in taking care of him until he died.

34 Silas Pickett said to him, "You made me shoot you to save my own life. Why did you do it?" Walter the Kid replied, "I know I was to blame. If you had not shot me, I would have shot you."

After Walter the Kid died Silas Pickett left the camp, and went away. He was advised to go by other persons working there, who said to him that he was among strangers, and in a strange country, and that if he were arrested he would probably have to lie in jail a long time before he could get a trial, and that it would probably be better for him to go away.

This is all that was done by Silas Pickett in the trouble with Walter the Kid.

Defendant further says that if this cause is continued until the next term of this court he believes and has reason to believe that he will be able to locate the whereabouts of said witnesses, so that service of subpoena may be had upon them; that the said witnesses are the only living witnesses by which he can prove the facts to which he believes they will testify; that the facts as set out in their testimony are true.

Defendant further says that on the 7th day of April, 1908, he filed his motion for continuance in this cause on the grounds that he was unable to procure the attendance of said witnesses, and was without sufficient means to pay for service of process upon them, and their mileage and per diem while in attendance upon said court; that at the time he filed said motion for continuance he believed the said witnesses to reside in Lawrence, Nebraska, because at the time of his arrest in this case they were then living at said point, working in a round house. Since filing said motion defendant has been informed that one of the witnesses, to wit, Henry Hodge, was working in the

vicinity of Little Rock, Arkansas, and that Charles Ceasar was in the vicinity of Crowder City, Oklahoma, and upon learning such
35 information defendant filed his motion on the 10th day of April, 1908, in this cause, praying for the process of this court, to bring said witnesses forthwith to this court to testify in his behalf, and that on the 15th day of April the process issued in pursuance to his motion was returned in this court showing that the said witnesses were not to be found at the places at which he had been informed and believed them to be.

Defendant further says that a short time ago he has been informed that said Henry Hodge was in the city of Oklahoma City, and stated at that time he was going to work for a contractor in the vicinity of Little Rock, Arkansas.

Defendant further says to the court that he has friends living in Oklahoma City who are acquainted with the said Henry Hodge and Charles Ceasar, who gave him the information above referred to as to their whereabouts, and that he believes with the assistance of said friends he will be able to locate the said Henry Hodge and Charles Ceasar, so that he may procure them as witnesses in his behalf at the next term of this court.

Defendant further says that this is the first term of this court at which this case has been called for trial; that he was indicted at the January term of this court while sitting at the city of Guthrie, Oklahoma, and the cause was continued to this term of the court sitting at Oklahoma City.

Defendant says that he has used all possible means within his power so far as it was known to him to procure the attendance of said witnesses, and that he is ready and anxious to go to trial as soon as he can secure their attendance; that he believes if said witnesses were procured for him he would be exonerated from the charge against him in this action, and that he fears if said witnesses are not procured in his behalf the result of the trial in this case may be fatal to him.

36 Defendant further says that he is without any means whatever to pay the said witnesses their mileage and per diem in attending on said court, and to pay for process to be served upon them, and that he is wholly unable to secure their attendance except at the expense of the plaintiff.

SILAS PICKETT.

Subscribed and sworn to before me this 16 day of April, 1908.

[Seal of the Circuit Court of
the U. S., Western District
of Oklahoma.]

HARRY L. FINLEY, *Clerk*,
By W. S. LAMB, *Deputy*.

(Endorsed:) No. 7. Circuit Court United States, 8th Judicial Circuit, Western District of Oklahoma. United States, plaintiff, vs. Silas Pickett, alias Papa Cy, defendant. Motion for continuance. Filed April 16, 1908. Harry L. Finley, clerk, by W. S. Lamb, deputy.

37

Journal entry.

On Thursday, the 16th day of April, 1908, proceedings were had and appear of record in this cause as follows, to wit:

UNITED STATES	}	7.
<i>vs.</i>		
SILAS PICKETT, ALIAS PAPA CY.		

Now, on this April 16, 1908, this cause comes on for trial on the regular assignment. The United States appears by John Embry, United States district attorney, and the defendant appears in open court in person and by T. J. Leahy, his attorney. Defendant presents his continuance, and the court having considered the same, orders that this cause be continued and assigned for trial for May 1, 1908, at 10 o'clock a. m. of said day.

It is further ordered by the court that Henry Hodge and Charles Ceasar be summoned as witnesses for defendant at the expense of the United States.

It is further ordered by the court that the witnesses herein be paid for their per diem and mileage.

38

Journal entry.—Order appointing defendant's atty.

On Friday, the 1st day of May, 1908, proceedings were had and appear of record in this cause as follows, to wit:

UNITED STATES,	}	7.
<i>vs.</i>		
SILAS PICKETT.		

Now, on this May 1, 1908, the plaintiffs in the above-entitled cause appear by John Embry, United States district attorney, and the defendant, Silas Pickett, appears in person in open court. The court orders that Leahy & Scott be permitted to withdraw as attorneys for defendant. And now, upon request of defendant, it is ordered by the court that Mitchell & Cox be appointed as attorneys for defendant, and said attorneys are present in court and accept said appointment.

39

Journal entry.

On Monday, the fourth day of May, 1908, proceedings were had and appear of record in this cause as follows, to wit:

UNITED STATES, PLAINTIFF,	}	7.
<i>vs.</i>		
SILAS PICKETT, ALIAS PAPA CY, DEFENDANT.		

Now on this May 4, 1908, this cause comes on for trial on the regular assignment to a jury on the issues herein joined by the in-

dictment and defendant's plea of not guilty thereto herein entered. The United States appears by John Embry, United States attorney, and Isaac D. Taylor, assistant United States attorney, and defendant, Silas Pickett, alias Papa Cy, appears in open court in person and by his attorneys, Mitchell & Cox and J. S. Twyford. On request of defendant, the prosecution elects to stand upon and try defendant upon the charge in the indictment in case number 7, United States vs. Silas Pickett, alias Papa Cy. Both parties announce ready for trial, and the court orders the clerk to draw a jury for the trial of this cause. And now come a jury of twelve good and lawful men duly drawn by the clerk from the box containing the names of the regular panel of jurors as follows, to wit:

- | | |
|---------------------|---------------------|
| 1. M. Tangney. | 7. H. J. Haines. |
| 2. David Kelly. | 8. A. L. Welch. |
| 3. E. A. Pemberton. | 9. C. W. Lackey. |
| 4. John Cassler. | 10. James O'Hara. |
| 5. Frank C. Boasen. | 11. Frank Bostwick. |
| 6. T. A. Bernsten. | 12. A. A. Hays. |

And said jurors are duly sworn to answer questions as to their competency, and are duly examined by said counsel and accepted as the jury for the trial of this cause, and the said jury is duly sworn by the clerk to try said cause.

40 Mr. Embry reads the indictment herein to the jury and states cause to the jury, and the counsel for the defendant states the defense to the jury. And thereupon on request of counsel for defendant the witnesses herein are called, duly sworn, and placed under the rule excluding them from the court room during the hearing of the testimony herein.

Carey Howard, Emanuel Marley, and A. L. Scarborough are called, duly sworn, and testify as witnesses for the prosecution.

And now at 5 o'clock p. m. the court duly admonishes the jury and permits them to separate until 10 o'clock to-morrow morning, and all further proceedings are suspended until that time.

41

Journal entry.

On Tuesday the fifth day of May, 1908, proceedings were had and appear of record in this cause as follows, to wit:

UNITED STATES, PLAINTIFF,	} 7.
<i>vs.</i>	
SILAS PICKETT, ALIAS PAPA CY, DEFENDANT.	

Now on this May 5, 1908, again come all to this action. The United States appears by John Embry, United States district attorney, and Isaac D. Taylor, assistant United States district attorney. The defendant, Silas Pickett, alias Papa Cy, appears in open court in

person and by his attorneys, J. S. Twyford and Mitchell & Cox, and the jury herein empanelled and sworn, and all members thereof are present. Further proceedings herein are had and done as follows, to wit:

Andrew Potete, George Rush, and Henry Majors are called, duly sworn, and are examined as witnesses for the prosecution, and the prosecution rests.

The defendant interposes a motion to direct the jury to return a verdict of not guilty. Motion is by the court considered and overruled and exceptions allowed to the defendant.

Thereupon defendant is called, duly sworn, and examined as a witness in his own behalf. Whereupon the parties rest and the evidence is closed.

And thereupon Isaac D. Taylor, assistant United States district attorney, makes the opening argument to the jury for the prosecution. Whereupon the court duly admonishes the jury and permits them to separate until 10 o'clock to-morrow morning, and all further proceedings herein are suspended until that time.

42

Journal entry.

On Wednesday, the 6th day of May, 1908, proceedings were had and appear of record in this cause as follows, to wit:

UNITED STATES, PLAINTIFF,	}	7.
<i>vs.</i>		
SILAS PICKETT, ALIAS PAPA CY, DEFENDANT.		

Now on this 6th day of May, 1908, again come all parties to this action. The United States appears by John Embry, United States district attorney, and Isaac D. Taylor, assistant United States district attorney. The defendant, Silas Pickett, alias Papa Cy, appears in open court in person and by his attorneys, J. S. Twyford and Mitchell and Cox. The jury herein empaneled and sworn to try this cause, and every member thereof are present.

Whereupon Messrs. Mitchell, Cox, and Twyford make their argument to the jury in behalf of the defendant. John Embry closes the argument to the jury on behalf of the prosecution. And at the close of the argument of counsel the court duly instructs the jury, and Mr. Armstrong and Mr. Minshall are duly sworn as bailiffs, and the jury retire in the charge of their sworn bailiffs to consider of their veridict in this case.

And afterwards on the same day, to wit, May 6, 1908, again come all parties to this action. The United States appears by J. W. Scotchorn and Isaac D. Taylor, assistant United States district attorneys, and the defendant, Silas Pickett, alias Papa Cy, appears in open court in person and by his counsel, Mitchell & Cox and J. S. Twyford,

and the jury herein empaneled and sworn to try this cause, and each and every member of said jury are present in charge of their sworn bailiffs. And said jury now return into open court their
 43 verdict herein, which verdict reads in words and figures as follows, to wit:

"In the Circuit Court of the United States for the Western District of Oklahoma.

UNITED STATES OF AMERICA, PLAINTIFF,	} Case No. 7.
<i>vs.</i>	
SILAS PICKETT, ALIAS PAPA CY, DEFENDANT.	

Verdict.

We, the jury, find the defendant, Silas Pickett, alias Papa Cy, guilty of murder as charged in the indictment, without capital punishment.

G. W. LACKEY, *Foreman.*"

On order of court, the clerk reads, files, and records said verdict in open court in the presence of the jury, and the court discharges the jury from further consideration of this case.

It is further ordered by the court that this cause be set for judgment and sentence on said verdict of the jury for 2 o'clock p. m. of May 25, 1908, and defendant is given until May 22, 1908, in which to file motion in arrest of judgment and motion for a new trial.

Defendant is remanded to the custody of the United States marshal to await the further order of the court in the premises.

44 In the Circuit Court of the United States for the Western District of Oklahoma.

UNITED STATES OF AMERICA, PLAINTIFF,	} Case No. 7.
<i>vs.</i>	
SILAS PICKETT, ALIAS PAPA CY, DEFENDANT.	

Verdict.

We, the jury, find the defendant, Silas Pickett, alias Papa Cy, guilty of murder, as charged in the indictment, without capital punishment.

C. W. LACKEY, *Foreman.*

(Endorsed:) No. 7. United States vs. Silas Pickett, alias Papa Cy. Verdict. Filed May 6, 1908. Harry L. Finley, clerk, by W. S. Lamb, deputy.

45

Journal entry.

On Monday, May 25, 1908, proceedings were had and appear of record in this cause as follows, to wit:

UNITED STATES, PLAINTIFF,	}	7.
<i>vs.</i>		
SILAS PICKETT, ALIAS PAPA CY, DEFENDANT.		

Now, at this time, May 25, 1908, comes the plaintiff into court by John W. Scothorn, assistant United States district attorney, and comes the defendant, Silas Pickett, alias Papa Cy, in his own proper person and by Attorney Jas. S. Twyford.

Thereupon, on motion of defendant, it is ordered by the court that the matter of motions herein and judgment be continued until May 28th, 1908, at 10 o'clock a. m.

46

Journal entry.

On Thursday, the 28th day of May, 1908, proceedings were had and appear of record in this cause as follows, to wit:

UNITED STATES	}	7.
<i>vs.</i>		
SILAS PICKETT, ALIAS PAPA CY.		

Now at this time, May 28th, 1908, comes the plaintiff by Assistant United States Attorney John W. Scothorn, and comes the defendant, Silas Pickett, alias Papa Cy, in his own proper person, and by Attorney Jas. S. Twyford.

Thereupon it is ordered by the court that the matter of hearing motion for a new trial, motion in arrest of judgment, and judgment and sentence, be continued until 10 o'clock to-morrow morning, May 29th, 1908.

47

Journal entry.

On Friday, the 29th day of May, 1908, proceedings were had and appear of record in this cause as follows, to wit:

UNITED STATES OF AMERICA, PLAINTIFF,	}	Crim. 7.
<i>vs.</i>		
SILAS PICKETT, ALIAS PAPA CY, DEFENDANT.		

Now at this time, May 29th, 1908, this cause comes on for hearing upon defendant's motion for a new trial herein. Comes the plaintiff by Assistant United States District Attorney John W. Scothorn, and

comes the defendant, Silas Pickett, alias Papa Cy, in his own proper person and by his attorneys, J. S. Twyford and Mitchell & Cox.

Thereupon argument of counsel is heard on the said motion of defendant for a new trial, and the court being fully advised, the said motion of defendant for a new trial is overruled. To which order and ruling the defendant excepted and excepts.

Thereupon the defendant files and presents his motion in arrest of judgment, and argument of counsel having been heard, and the court being fully advised, the said motion of the defendant in arrest of judgment is by the court overruled. To which order and ruling of the court defendant excepted and excepts.

Thereupon this cause comes on for hearing upon the judgment and sentence of the court on the verdict of the jury herein returned and filed, as follows, to wit:

In the Circuit Court of the United States for the Western District of Oklahoma.

Judgment and sentence.

UNITED STATES OF AMERICA, PLAINTIFF,	
vs.	
SILAS PICKETT, ALIAS PAPA CY, DEFENDANT.	

48 Now, on this 29th day of May, A. D. 1908, the same being a judicial day of the regular March, 1908, term of the Circuit Court of the United States for the Western District of Oklahoma, begun and held at the city of Oklahoma City, in said district, on the 2nd day of March, A. D. 1908, the above-entitled cause comes on for judgment and sentence of the court on the verdict of the jury herein returned and filed.

The plaintiff, The United States of America, appears by John W. Scothorn, assistant United States Attorney for the Western District of Oklahoma, and the defendant, Silas Pickett, alias Papa Cy, appears in open court in his own proper person and by his attorneys, J. S. Twyford and Mitchell & Cox.

This being the day regularly assigned for pronouncing judgment and sentence against said defendant, the court informs the said defendant that he was duly indicted for the crime of murder; that he was duly arraigned and entered his plea of not guilty to said indictment; that he was tried to a jury and by the said jury was found guilty of murder, without capital punishment, as charged in the indictment; the said defendant is now by the court asked if he has any legal cause to show why judgment and sentence should not be pronounced and entered against him at this time, and the defendant failing to show any legal cause why the judgment and sentence of the court should not now be entered and pronounced against him, and the

court being fully advised in the premises, upon the verdict of the jury herein returned and filed, find the said defendant, Silas Pickett, alias Papa Cy, is guilty of the crime of murder as charged in the indictment herein, and that for the said offense by him committed he should be confined in the federal penitentiary at Leavenworth, in the State of Kansas, for the period of his natural life, at hard labor.

49 It is, therefore, by the court considered, ordered, adjudged, and decreed, and it is the order, judgment, and sentence of the court that the said defendant, Silas Pickett, alias Papa Cy, is guilty of the crime of murder as charged in the indictment herein, and that for said crime by him committed he be confined in the federal penitentiary, at Leavenworth, in the State of Kansas, at hard labor, for the period of his natural life.

It is the further order and judgment of the court that the United States marshal of the Western District of Oklahoma transport the said defendant, Silas Pickett, alias Papa Cy, to the said federal penitentiary, and deliver the said defendant to the warden and keeper of the said federal penitentiary, and that the warden and keeper of said penitentiary detain the said defendant in accordance with the judgment and sentence of the court as herein set out.

It is the further order of the court that the clerk of this court immediately make and certify, under his official signature and the seal of the court, two copies of the judgment and sentence: one of said copies the said United States marshal shall deliver to the warden and keeper of said penitentiary, said copy to be full and sufficient warrant and authority for said warden and keeper of said penitentiary to detain said defendant in accordance with this judgment and sentence; the other of said copies shall be full and sufficient warrant and authority for the said United States marshal to transport the said defendant to the said penitentiary, and upon which said copy the said United States marshal shall make his return of his doings herein.

50 UNITED STATES OF AMERICA, PLAINTIFF, }
vs.
 SILAS PICKETT, ALIAS PAPA CY, DEFENDANT. }

Now, at this time, May 29th, 1908, the plaintiff being present, by Assistant United States Attorney John W. Scothorn, and the defendant, Silas Pickett, alias Papa Cy, being present in his own proper person and by his attorney, J. S. Twyford and Mitchell and Cox, and judgment and sentence having been pronounced upon the said defendant by the court, thereafter and thereupon the defendant excepts to the said judgment and sentence, and it is ordered by the court that defendant be given sixty days from this date in which to prepare and file in this court his bill of exceptions.

Motion in arrest of judgment.

UNITED STATES OF AMERICA,

Western District Court of Oklahoma, ss:

In the District Court of the United States in and for the Western
District of Oklahoma.

Motion in arrest of judgment.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

SILAS PICKETT, ALIAS PAPA CY AND MARBLE EYE, WHOSE
true name is to the grand jurors unknown, defendants.

No. 7.

Comes now the defendant, Silas Pickett, and makes this his motion in arrest of judgment herein, and moves and asks the court to stay the execution of judgment and sentence herein and grant a re-examination and new trial, or stop all proceedings and discharge the defendant; and for grounds of this motion respectfully shows and submits to the court that the court erred in the following, to wit:

First. In overruling defendant's motion for a new trial herein, to which ruling the defendant duly excepted.

Second. That at the time said cause was called for trial the defendant, by his counsel, objected to being tried in Oklahoma City, wherein the offense with which he was charged was alleged to have been committed near Pawhuska, in the Osage Nation, the said Oklahoma City not being within said nation, or near thereto, which objection was overruled by the court and duly excepted to by the defendant; that at the same time the defendant, by his counsel, made application in open court for a continuance of the case and allowance of a reasonable time in which to prepare his defense, and as grounds for such application and continuance the said de-
52 fendant shows to the court that his counsel had only been in the case two or three days, which application the court overruled, to which ruling the defendant duly excepted.

Third. The defendant objected to going to trial under indictment No. 7 for the reason that the said indictment was bad: First, for a duplicity; second, for the reason that it did not state acts and facts sufficient to constitute a public offense against the defendant, Silas Pickett, which objection was overruled by the court and duly excepted to by the defendant.

Fourth. That after a jury was selected and the case proceeded to trial and the first witness was called the defendant objected, by his counsel, to the introduction of any evidence to support the prosecution for the reason that indictment #7 was bad, and that it did not state acts and facts sufficient to constitute a public offense against the defendant, Silas Pickett, which objection was overruled by the court and excepted to by the defendant.

Fifth. That the court erred in admitting evidence adduced during and throughout the trial and at numerous times which the defendant is unable to set out in this motion, for the reason that no transcript has been made thereof, which evidence was objected to by the defendant and which objection was overruled by the court, to which rulings the defendant duly excepted.

Sixth. That the court erred in admitting certain evidence testified to by witnesses on the part of the Government in substance as follows: That at some time prior to the alleged killing, and not as a part of the transaction thereof, one Emanuel Marley made certain verbal statements to "Walter the Kid," who is alleged to have been killed by the defendant, and Marble Eye, and which statements were not made in the presence or hearing of the defendant, Silas Pickett, or the defendant, Marble Eye, to the effect that Marble Eye, and the defendant, Silas Pickett, were coming and for him, "Walter the Kid," to run, which evidence was objected to by the defendant and admitted by the court over the objections of the defendant, to which ruling the defendant excepted.

Seventh. The court erred in that the offense charged in the indictment is alleged to have been committed on the day of , 1907, and upon the trial it appeared from the evidence of the Government that the offense, if any, was actually committed on the day of , 1905; that thereupon the defendant, by his counsel, called the court's attention to the variance between the indictment and the proof and asked that the proceedings stop, according to law, for the reason that the defendant was taken by surprise and was entitled to have the proceedings stopped, which application and objection was refused and overruled by the court and duly excepted to by the defendant.

Eighth. That at the time the Government rested its case the defendant requested and made application that the jury be directed or requested to return a verdict for the defendant: First, because the evidence adduced by the Government was not sufficient to sustain a verdict that the defendant, Silas Pickett, by his acts was the cause of the death of "Walter the Kid," in manner and form as alleged in the indictment; second, there is not sufficient proof of venue shown and giving the court jurisdiction over the cause and sufficient to sustain a verdict of guilty, which application and objection the court refused and overruled, to which ruling the defendant duly excepted.

Ninth. That the court erred in refusing certain evidence as shown by the record adduced on the part of the defense, to which ruling the defendant duly excepted.

JAMES F. TWYFORD,

Attorney for Defendant.

(Endorsed:) No. 7. The United States of America, plaintiff *vs.* Silas Pickett et al., defendants. Motion in arrest of judgment. Filed May 29, 1908. Harry L. Finley, clerk. James S. Twyford, attorney for defendant, Silas Pickett.

54 *Petition for writ of error, with assignment of errors and affidavit attached thereto.*

In the United States District Court for the Western District of Oklahoma, and before the district judge of said court sitting as circuit judge for said district.

SILAS PICKETT, PLAINTIFF IN ERROR,	} No. .
<i>vs.</i>	
THE UNITED STATES OF AMERICA, DEFENDANT IN ERROR.	

Petition for writ of error.

Your petitioner, Silas Pickett, plaintiff in error, in the above entitled cause, respectfully shows to the court that an indictment was returned and filed in the District Court of the United States, within and for the Western District of Oklahoma, on the 8th day of February, 1908, by a grand jury of said court, charging the petitioner, Silas Pickett, alias "Papa Cy," and Marble Eye, whose real name was alleged to be unknown, with the crime of murder; said offense being in said indictment alleged to have been committed on the 14th day of October, 1907, in the Osage Nation, as particularly set out in the indictment, and alleging matters sufficient to bring the case within the jurisdiction of the United States District Court; that on the 4th and 5th days of May, 1908, your petitioner was tried for murder under the said indictment before Honorable John H. Cottoral, sitting as circuit judge in and for the Western District of the State of Oklahoma, before a jury, and that said jury returned a verdict of "guilty of murder, without capital punishment," and thereupon your petitioner filed a motion for a new trial, which motion was on the 29th day of May, 1908, overruled by the court, and thereupon the defendant filed a motion in said court and before said judge as aforesaid in arrest of judgment, which motion was by the court overruled, to which rulings the defendant excepted, and thereupon the

55 court sentenced your petitioner to confinement at hard labor in the penitentiary at Leavenworth, Kansas, for a period of his natural life, to which sentence the defendant duly excepted; all of which was to the prejudice of the legal rights of your petitioner, Silas Pickett.

Your petitioner further shows to the court that this is a proper case to be reviewed by the Supreme Court of the United States, in that the petitioner was convicted of a capital offense before the circuit judge of the United States of the Western District of Oklahoma and over which offense, under the allegations in the indictment, said court had exclusive jurisdiction.

And your petitioner further shows to the court that the judgment before mentioned is a final one; that under the laws of the United States a judgment from which an appeal by writ of error may be taken to the Supreme Court of the United States, and, therefore,

your petitioner would respectfully pray that a writ of error be allowed him in the above entitled cause directing the clerk of the United States Circuit Court for the Western District of the State of Oklahoma to have transcribed and made up and sent to the United States Supreme Court a record of all the proceedings in said cause with all things concerning the same, in order that the errors complained of in the assignment of errors herewith filed by said plaintiff in error may be reviewed, and if error be found, corrected, according to the laws and customs of the United States.

SILAS PICKETT,

Plaintiff in Error.

By JAMES S. TWYFORD,

MITCHELL & COX,

JOHN S. JENKINS,

Attorneys for Plaintiff in Error.

56 In the United States District Court for the Western District of Oklahoma, and before the district judge of said court sitting as circuit judge for said district.

SILAS PICKETT, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA, DEFENDANT IN ERROR.

} No. —.

Assignment of errors.

And now comes the plaintiff in error and say that in the record and proceedings aforesaid of the said United States Circuit Court for the Western District of Oklahoma in the above entitled cause, and in the rendition of the final judgment and sentence therein, manifest error has intervened to the prejudice of the said plaintiff in error, in this, to wit:

First. In overruling defendant's motion for a new trial herein, to which ruling the defendant duly excepted.

Second. That at the time said cause was called for trial the defendant, by his counsel, objected to being tried in Oklahoma City, wherein the offense with which he was charged was alleged to have been committed near Pawhuska, in the Osage Nation, the said Oklahoma City not being within said nation, or near thereto, which objection was overruled by the court and duly excepted to by the defendant; that at the same time the defendant, by his counsel, made application in open court for a continuance of the case and allowance of a reasonable time in which to prepare his defense, and as grounds for such application and continuance the said defendant shows to the court that his counsel had only been in the case two or three days, which application the court overruled, to which ruling the defendant duly excepted.

57 Third. The defendant objects to going to trial under indictment No. 7 for the reason that the said indictment was bad. First, for a duplicity; second, for the reason that it did not state acts

and facts sufficient to constitute a public offense against the defendant, Silas Pickett, which objection was overruled by the court and duly excepted to by the defendant.

Fourth. That after a jury was selected and the case proceeded to trial and the first witness was called the defendant objected, by his counsel, to the introduction of any evidence to support the prosecution for the reason that indictment No. 7 was bad, and that it did not state acts and facts sufficient to constitute a public offense against the defendant, Silas Pickett, which objection was overruled by the court and excepted to by the defendant.

Fifth. That the court erred in admitting evidence adduced during and throughout the trial and at numerous times which the defendant is unable to set out in this motion, for the reason that no transcript has been made thereof, which evidence was objected to by the defendant and which objection was overruled by the court, to which rulings the defendant duly excepted.

Sixth. That the court erred in admitting certain evidence testified to by witnesses on the part of the Government, in substance as follows: That at some time prior to the alleged killing, and not as a part of the transaction thereof, one Emanuel Marley made certain verbal statements to Walter the Kid, who is alleged to have been killed by the defendant, and Marble Eye, and which statements were not made in the presence of hearing of the defendant, Silas Pickett, or the defendant, Marble Eye, to the effect that Marble Eye, and the defendant, Silas Pickett, were coming, and for him (Walter the Kid) to run; which evidence was objected to by the defendant and admitted by the court over the objections of the defendant, to which ruling the defendant excepted.

58 Seventh. The court erred in that the offense charged in the indictment is alleged to have been committed on the 14th day of October, 1907, and upon trial it appeared from the evidence of the government that the offense, if any, was actually committed on or about the 12th day of December, 1905; that thereupon, the defendant, by his counsel, called the court's attention to the variance between the indictment and the proof and asked that the proceedings stop, according to law, for the reason that the defendant was taken by surprise and was entitled to have the proceedings stopped, which application and objection was refused and overruled by the court and duly excepted to by the defendant.

Eighth. That at the time the government rested its case the defendant requested and made application that the jury be directed to or requested to return a verdict for the defendant: First, because the evidence adduced by the government was not sufficient to sustain a verdict that the defendant, Silas Pickett, by his acts was the cause of the death of "Walter the Kid" in manner and form as alleged in the indictment. Second, there is not sufficient proof of venue shown and giving the court jurisdiction over the cause and sufficient to sustain a verdict of guilty, which application and objection the court refused and overruled, to which ruling the defendant duly excepted.

Ninth. That the court erred in refusing certain evidence as shown by the record adduced on the part of the defense, to which ruling the defendant duly excepted.

Tenth. That the court erred in overruling the motion of the defendant herein for a new trial, to which ruling the defendant duly excepted.

Eleventh. That the court erred in overruling the defendant's motion in arrest of judgment herein, to which ruling the defendant duly excepted.

SILAS PICKETT.

JAMES S. TWYFORD,

MITCHELL & COX,

JOHN S. JENKINS,

Attorneys for Petitioner in Error.

59

Affidavit.

STATE OF OKLAHOMA,

County of Logan, ss:

Silas Pickett, of lawful age, being first duly sworn, on his oath deposes and says: That he is the plaintiff in error in the case of Silas Pickett, plaintiff in error, vs. the United States of America, defendant in error; that he is desirous of prosecuting, by writ of error, an appeal from the Circuit Court of the United States for the Western District of Oklahoma, and that he is unable by reason of his poverty to pay the clerk of said court for transcribing and making up the record in the above case: said poverty consisting of this: That he is incarcerated in jail and is without friends who will furnish any means for the purposes of prosecuting this appeal, and that he is absolutely without any property, either real or personal, by means of which money can be raised: that he is a citizen of the United States, and is a stranger in said Western District of Oklahoma, and is unable, in any way, to raise or obtain money for the purposes aforesaid.

Wherefore he respectfully asks the Supreme Court, or a justice thereof, to order the clerk of the United States Circuit Court for the Western District of Oklahoma to prepare and make up a full transcript of all proceedings had in said cause, and a copy thereof for the plaintiff in error, without the plaintiff in error paying for the same.

SILAS PICKETT,

Plaintiff in Error.

Subscribed and sworn to before me by Silas Pickett this 4th day of June, 1908.

[Seal notary public.]

E. J. BLACKMAN,

Notary Public.

My commission expires the 27th day of Dec., 1910.

61 (Endorsed:) No. 7. In the United States District and Circuit Court in and for Western District of Oklahoma. Silas Pickett, plaintiff in error, vs. The United States, deft. in error. Petition for writ of error. Filed June 27th, 1908. Harry L. Finley, clerk. James S. Twyford, Mitchell & Cox, and John S. Jenkins, attorneys for plaintiff in error.

62 In the United States District Court for the Western District of Oklahoma, and before the district judge of said court, sitting as circuit judge for said district.

Order.

SILAS PICKETT, PLAINTIFF IN ERROR,	}
<i>vs.</i>	
THE UNITED STATES OF AMERICA, DEFENDANT IN ERROR.	}

Now, on this 10th day of August, 1908, this matter coming on to be heard before the undersigned judge of said court, sitting as judge of said Circuit Court, on the petition for writ of error for Silas Pickett, plaintiff in error, and it appearing by said petition in error, the assignment of error thereto attached, and the affidavit attached to said application, that the said plaintiff in error is entitled to a writ of error to be issued by the clerk of said Circuit Court in and for the Western District of the State of Oklahoma directly to the Supreme Court of the United States of America, and is entitled to a full transcript of the record showing all the proceedings had in the trial of said cause under the seal of the clerk of said court, and that the said plaintiff in error is a poor person and unable to make a deposit to pay for said transcript,

Now, it is therefore ordered, adjudged, and decreed by the court that a writ of error be allowed by said court; that the clerk of the Circuit Court of the Western District of the State of Oklahoma is hereby ordered and directed to cause to be made out and to make out a full and complete record of the above entitle' cause, under the seal of his court, as prayed for in the petition for writ of error herein without costs on the part of the plaintiff in error, and that all of said proceedings, including the petition for writ of error herein, and all things thereunto appertaining, be forthwith transmitted to the clerk of the Supreme Court of the United States of America, Washington, D. C.

JOHN H. COTTERAL,

*Judge of the United States District Court in and for the
Western District of the State of Oklahoma, and Judge of
said Circuit Court, presiding as trial judge in said cause.*

(Endorsed:) In the Circuit Court of the United States for the Western District of Oklahoma. Silas Pickett, plff. in error vs. United States, deft. in error. Order allowing writ of error. Filed Aug. 10, 1908. Harry L. Finley, clerk.

64 In the United States District Court for the Western District of Oklahoma, and before the district judge of said court, sitting as circuit judge for said district.

Application.

SILAS PICKETT, PLAINTIFF IN ERROR,	}
<i>vs.</i>	
THE UNITED STATES OF AMERICA, DEFENDANT IN ERROR.	}

Comes now plaintiff in error, by his attorneys, and makes application to the court praying that a certain paper called "A motion for a new trial," and attached hereto, marked "Exhibit A," may be filed in the above-entitled cause and made a part of the record therein as an original motion for a new trial in said cause, and for grounds hereof alleges:

That the said exhibit is an exact copy of a paper filed in the office of the clerk of the United States Circuit in and for the Western District Court of Oklahoma while the said court was in session in Oklahoma City, Oklahoma, during the month of May, 1908; that said plaintiff in error, by his attorney, filed the said motion for a new trial with said clerk on the day following the day on which the said defendant, Silas Pickett, was found guilty of murder; that the presiding judge heard said motion and overruled the same before sentence of Silas Pickett; that plaintiff in error is now informed by the clerk aforesaid that the said motion for a new trial does not appear of record in his office.

Wherefore plaintiff in error prays for order of court correcting the record and allowing the exhibit hereto attached to be filed as of date following verdict in the cause.

SILAS PICKETT, *Plaintiff in Error*,
By JAMES S. TWYFORD, MITCHELL & COX,
His Attorneys.

65 STATE OF OKLAHOMA,
Oklahoma County, ss:

Jas. S. Twyford, of lawful age, being first sworn, says that he filed the motion for a new trial, as alleged herein.

JAMES S. TWYFORD.

Subscribed and sworn to before me this 3d day of September, 1908.

[SEAL.]

EDWARDS E. REARDON,

Notary Public.

(My commission expires Sept. 11, 1909.)

(Endorsed:) Silas Pickett, plaintiff in error vs. United States of America, defendant in error. Application to file motion for new trial. Filed September 4, 1908. Harry L. Finley, clerk.

(Exhibit A attached.)

EXHIBIT A.

UNITED STATES OF AMERICA,

Western District of Oklahoma, ss:

In the District Court of the United States in and for the Western
District of Oklahoma.

Motion for new trial.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

SILAS PICKETT, ALIAS PAPA CY, AND MARBLE EYE, WHOSE
true name is to the grand jurors unknown, defendants.

} No. 7.

Comes now the defendant Silas Pickett, and leave of court being first duly had, files this his motion for a new trial, and for grounds thereof respectfully shows to the court that the court erred in the following particulars, to wit:

First. That at the time said cause was called for trial the defendant, by his counsel, objected to being tried in Oklahoma City, whereas the offense with which he was charged was alleged to have been committed near Pawhuska, in the Osage Nation, the said Oklahoma City not being within said nation, or near thereto; which objection was overruled by the court and duly excepted to by the defendant. That at the same time the defendant, by his counsel, made application in open court for a continuance of the case and allowance of a reasonable time in which to prepare his defense, and as grounds for such application and continuance the said defendant shows to the court that his counsel had only been in the case two or three days; which application the court overruled, to which ruling the defendant duly excepted.

67 Second. The defendant objected to going to trial under indictment No. 7, for the reason that the said indictment was bad: First, for a duplicity; second, for the reason that it did not state acts and facts sufficient to constitute a public offense against the defendant Silas Pickett; which objection was overruled by the court and duly excepted to by the defendant.

Third. That after a jury was selected and the case proceeded to trial and the first witness was called the defendant objected, by his counsel, to the introduction of any evidence to support the prosecution for the reason that indictment # 7 was bad, in that it did not state acts and facts sufficient to constitute a public offense against the defendant Silas Pickett; which objection was overruled by the court and excepted to by the defendant.

Fourth. That the court erred in admitting evidence adduced during and throughout the trial and at numerous times which the defendant is unable to set out in this motion, for the reason that no transcript has been made thereof; which evidence was objected to by

the defendant, and which objection was overruled by the court, to which rulings the defendant duly excepted.

Fifth. That the court erred in admitting certain evidence testified to by witnesses on the part of the Government, in substance as follows: That at some time prior to the alleged killing, and not as a part of the transaction thereof, one Emanuel Marley made certain verbal statements to "Walter the Kid," who is alleged to have been killed by the defendant and Marble Eye, and which statements were not made in the presence or hearing of the defendant Silas Pickett or the defendant Marble Eye, to the effect that Marble Eye and the defendant Silas Pickett were coming, and for him, "Walter the Kid," to run; which evidence was objected to by the defendant and admitted by the court over the objections of the defendant, to which ruling the defendant excepted.

68 Sixth. The court erred in that the offense charged in the indictment is alleged to have been committed on the day of , 1907, and upon the trial it appeared from the evidence of the Government that the offense, if any, was actually committed on the day of , 1905; that thereupon the defendant, by his counsel, called the court's attention to the variance between the indictment and the proof and asked that the proceedings stop, according to law, for the reason that the defendant was taken by surprise and was entitled to have the proceedings stopped; which application and objection was refused and overruled by the court and excepted to by the defendant.

Seventh. That at the time the Government rested its case the defendant requested and made application that the jury be directed or requested to return a verdict for the defendant: First, because the evidence adduced by the Government was not sufficient to sustain a verdict that the defendant, Silas Pickett, by his acts was the cause of the death of "Walter the Kid," in manner and form as alleged in the indictment; second, there is not sufficient proof of venue shown and giving the court jurisdiction over the cause and sufficient to sustain a verdict of guilty; which application and objection the court refused and overruled, to which ruling the defendant duly excepted.

Eighth. That the court erred in refusing certain evidence as shown by the record adduced on the part of the defense, to which ruling the defendant duly excepted.

JAMES S. TWYFORD, MITCHELL & COX,

Attorneys for Defendant.

69 (Endorsed:) August , 1908. Leave is hereby granted to file this motion for a new trial as of date of verdict of guilty herein.

Judge.

Pursuant to order of the honorable judge of date September 5th, 1908, the within motion is hereby accepted and endorsed as filed of date May 7th, 1908. Harry L. Finley, clerk.

70 In the Circuit Court of the United States for the Western District of Oklahoma.

UNITED STATES OF AMERICA, PLAINTIFF,	}
<i>vs.</i>	
SILAS PICKETT, ALIAS PAPA CY, DEFENDANT.	

Now, on this fifth day of September, 1908, the application of the defendant comes on to be heard praying an order that a copy of the original motion for a new trial be filed herein and made a part of the record, and due cause appearing from the showing made, it is accordingly ordered that said application be granted and that said copy of original motion be accepted and filed herein in lieu of said original motion as of date May seventh, 1908.

JOHN H. COTTERAL, *Judge.*

(Endorsed:) #7. United States of America, plaintiff, vs. Silas Pickett, alias Papa Cy, defendant. Order to file motion. Filed Sept. 5, 1908. Harry L. Finley, clerk.

71 UNITED STATES OF AMERICA,
Western District of Oklahoma, ss:

I, Harry L. Finley, clerk of the Circuit Court of the United States for the Western District of Oklahoma, do hereby certify that the above and foregoing transcript is a full, true, and complete transcript of the record and proceedings in cause No. 7, The United States of America, plaintiff, vs. Silas Pickett, defendant, together with all things concerning the same, as full, true, and complete as the originals of the same now remain on file or of record in my office.

I further certify that the original citation and writ of error in said cause are hereto attached and herewith returned.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Guthrie, in said district, this 5th day of September, A. D. 1908.

[SEAL.]

HARRY L. FINLEY,
*Clerk of the Circuit Court of the
Western District of Oklahoma.*

Office of the clerk, Supreme Court U. S. Received Sep. 9, 1908.
(Indorsement on cover:) File No. 21375. W. Oklahoma C. C. U. S.
Term No. 270. Silas Pickett, plaintiff in error, vs. The United States.
Filed October 16th, 1908. File No. 21375.

24
U.S. SUPREME COURT, S. 2.
FILED
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JAMES H. MCKENNEY.
CLERK

No. 270.

In the Supreme Court of the United States.

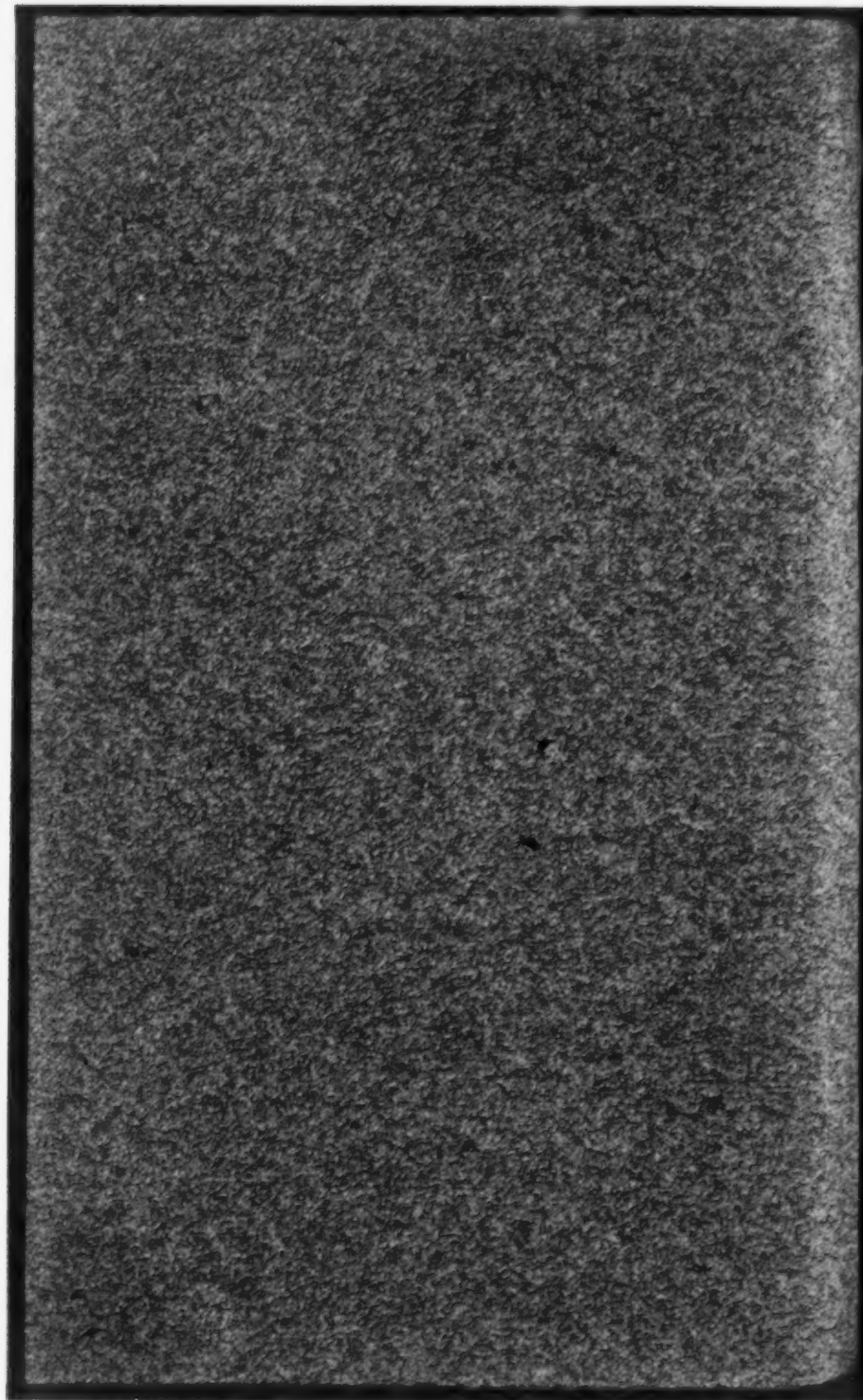
OCTOBER TERM, 1909.

SILAS PICKETT, PLAINTIFF IN ERROR,

v.
THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF OKLAHOMA.

MOTION TO ADVANCE.



In the Supreme Court of the United States.

OCTOBER TERM, 1909.

SILAS PICKETT, PLAINTIFF IN ERROR,	} No. 270.
v.	
THE UNITED STATES.	

MOTION TO ADVANCE.

The plaintiff in error, a negro and not an Indian, was indicted in the Circuit Court of the United States for the Western District of Oklahoma on February 8, 1908, for the murder on October 14, 1907, in the Indian country, on the Osage Indian Reservation, of a man known as "Walter the Kid." He was tried and found guilty, without capital punishment, and sentenced to imprisonment for life.

On this writ of error questions are raised as to the jurisdiction of the trial court, the sufficiency of the indictment, the admission and rejection of evidence, etc.

In accordance with rule 26, section 3, the Solicitor-General moves the court to advance the case on the docket and set it down for hearing on a day convenient to the court during the present term.

Notice of this motion has been served upon counsel
for plaintiff in error in the lower court.

LLOYD W. BOWERS,
Solicitor-General.

NOVEMBER, 1909.

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No. 870.

In the Supreme Court of the United States

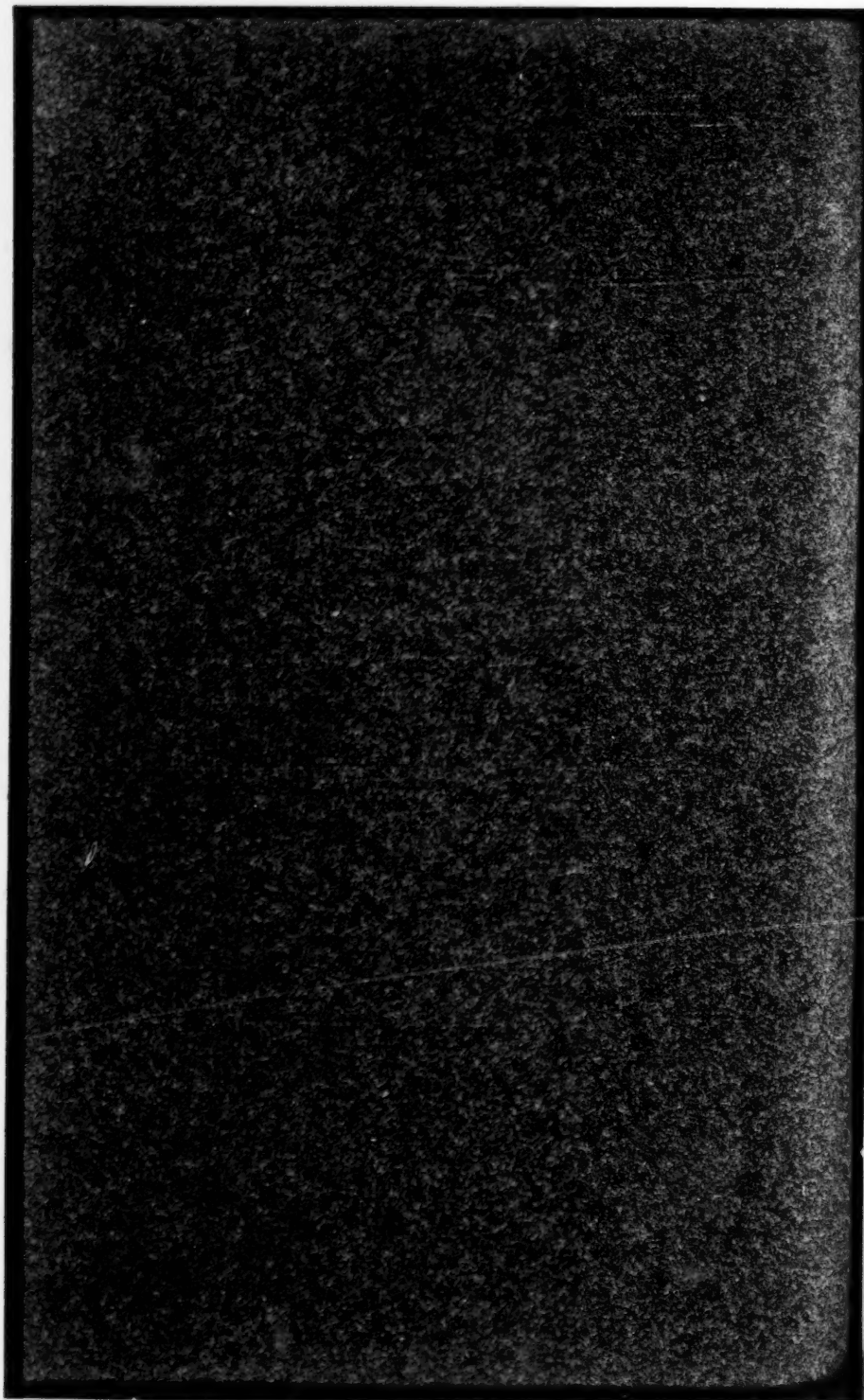
OCTOBER TERM, 1909

SHELL PICKENS, PLAINTIFF IN ERROR,

THE UNITED STATES,

ON ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF CALIFORNIA.

WRIT FOR THE UNITED STATES



In the Supreme Court of the United States.

OCTOBER TERM, 1909.

SILAS PICKETT, PLAINTIFF IN ERROR,	}	No. 270.
v.		
THE UNITED STATES.		

*IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF OKLAHOMA.*

BRIEF FOR THE UNITED STATES.

STATEMENT OF CASE.

The plaintiff in error, a negro, was indicted February 19, 1908, in the United States District Court for the Western District of Oklahoma for the murder of a negro known as "Walter the Kid," within the limits of the Osage Indian Reservation in that district.

The State of Oklahoma was admitted into the Union on November 16, 1907 (35 Stat., 2160). The indictment charged that the offense was committed October 14, 1907, "within that part of the Osage Indian Reservation, in the former Territory of Oklahoma," lying outside of certain towns and town sites, and, "being then and there Indian country and under the sole and exclusive jurisdiction of the United

States and not within the jurisdiction of any State," by "Silas Pickett, alias Papa Cy, and Marble Eye, whose true name is to the grand jurors unknown, but who was commonly known as Marble Eye, negroes and not Indians, and not members of the Osage tribe of Indians residing upon the Osage Indian Reservation" (R., 4-5).

The indictment was remitted to the Circuit Court (R., 3), as required by section 1039 of the Revised Statutes. A motion to quash, upon the ground that the court was without jurisdiction and the grand jury was not properly drawn, was overruled (R., 6, 9). A demurrer, challenging the jurisdiction and attacking the sufficiency of the indictment, was likewise overruled (R., 7, 9).

The plaintiff in error was convicted (R., 22), motions for a new trial (R., 34) and in arrest of judgment (R., 26) were overruled (R., 24), and he was sentenced to imprisonment for life at hard labor in the Federal penitentiary at Leavenworth, Kans. (R., 24). A writ of error direct to this court was sued out by him (R., 28), under authority of section 5 of the act of March 3, 1891 (26 Stat., 826, 827).

STATUTES, ETC.

The Osage Reservation, established by order of the Secretary of the Interior dated March 27, 1871 (Ex. Orders Rel. Indian Reservations, p. 90), and an act of June 5, 1872 (17 Stat., 228), with the consent of the Cherokees (treaty of 1866, art. 16, 14 Stat., 799), lies within the boundaries of the Territory of Oklahoma as defined by the act of May 2, 1890 (26 Stat., 81), to provide a temporary government for that Territory, which provides (sec. 6):

That the legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States.

The general law prescribing punishment for the crime of murder in places within the exclusive jurisdiction of the United States (R. S., sec. 5339, as amended by the act of January 15, 1897 (29 Stat., 487), was extended to the Indian country by section 2145 of the Revised Statutes.

The Osage Reservation was expressly excepted from the provisions of the general allotment act of February 8, 1887 (sec. 8, 24 Stat., 388). At the date of this offense a commission for the allotment and division of the reservation lands had been appointed, under authority of the act of June 28, 1906 (34 Stat., 539), but no selections of allotments had been approved or deeds issued by the Secretary of the

Interior, and the land was still in process of allotment by the commission (Rep. Com. Ind. Affairs, 1907, p. 155; 1908, p. 157). This allotment act of 1906 provided, section 2, that—

Each member of said tribe shall be permitted to designate which of his three selections shall be a homestead, and his certificate of allotment and deed shall designate the same as a homestead, and the same shall be inalienable and nontaxable until otherwise provided by act of Congress. The other two selections of each member, together with his share of the remaining lands allotted to the member, shall be known as surplus land, and shall be inalienable for twenty-five years, except as hereinafter provided.

The enabling act of June 16, 1906 (34 Stat., 267), provides, section 13, that the State of Oklahoma "when admitted as aforesaid shall constitute two judicial districts, to be known as the eastern district of Oklahoma and the western district of Oklahoma; the said Indian Territory shall constitute said eastern district, and the said Oklahoma Territory shall constitute said western district."

The same section also provides that—

The circuit and district courts for each of said districts, and the judges thereof, respectively, shall possess the same powers and jurisdiction and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations.

Section 14 of the same act is as follows:

That all prosecutions for crimes or offenses hereafter committed in either of said judicial districts as hereby constituted shall be cognizable within the district in which committed, and all prosecutions for crimes or offenses committed before the passage of this Act in which indictments have not yet been found or proceedings instituted shall be cognizable within the judicial district as hereby constituted in which such crimes or offenses were committed.

Section 21 provides:

That the constitutional convention may by ordinance provide for the election of officers for a full state government, including members of the legislature and five Representatives to Congress, and shall constitute the Osage Indian Reservation a separate county, and provide that it shall remain a separate county until the lands in the Osage Indian Reservation are allotted in severalty and until changed by the legislature of Oklahoma, and designate the county seat thereof, and shall provide rules and regulations and define the manner of conducting the first election for officers in said county, * * * and all laws in force in the Territory of Oklahoma at the time of the admission of said State into the Union shall be in force throughout said State, except as modified or changed by this Act or by the constitution of the State, and the laws of the United States not locally inapplicable shall have the same force and effect within said State as elsewhere within the United States.

ARGUMENT.

I.

As to the jurisdiction of the lower court.

The assignments of error do not question the jurisdiction of the trial court, although such question was raised by the demurrer and motion to quash.

This offense was committed during the period of transition from territorial to State government in Oklahoma. It was an offense in violation of a general law of the United States applicable to such crimes by other than Indians or against Indians committed in the Indian country within the limits of a Territory, and, had no steps to form a state government been taken, it would have been cognizable in a district court of the Territory sitting as a court of the United States. (*In re Wilson*, 140 U. S., 575; *Brown et al. v. United States*, 146 Fed., 975, 13 Okla., 512; *Jemina Goodson v. United States*, 7 Okla., 117.)

The offense was committed in a place within the exclusive jurisdiction of the United States in violation of a general Federal statute, as well as in the Indian country. In a State, under such circumstances, it would have been a subject of Federal jurisdiction. The offense, therefore, is one jurisdiction of which Congress could and should have transferred to the

Federal courts in the new State. (*Forsyth v. United States*, 9 How., 570; *Cook v. United States*, 138 U. S., 157; *Koenigsberger v. Richmond Silver Mining Co.*, 158 U. S., 41; *United States v. Baum*, 74 Fed., 43.) The case last cited is closely analogous to this, and very instructive. Indeed, such offense being a violation of a general law of the United States, it is doubtful whether Congress could have transferred jurisdiction to a State court (*Martin v. Hunter's Lessee*, 1 Wheat., 304, 334-337). In that case, Mr. Justice Story said:

No part of the criminal jurisdiction of the United States can, consistently with the Constitution, be delegated to State tribunals.

The enabling act, sections 13 and 14, expressly confers jurisdiction of such offenses upon the court in which this case was tried, however the latter section may be construed—whether as applying to offenses committed before and after the passage of that act, or, as we think, to those committed before and after the admission of the State; or whether applying to all offenses, or, as we think, simply to those arising under the Constitution and laws of the United States, over which Federal courts ordinarily have jurisdiction.

The enabling act as a whole indicates the intention of Congress that the State courts should succeed to the jurisdiction exercised by the territorial courts as such, and the Federal courts to the jurisdiction exercised by the territorial courts sitting as courts of the United States.

Within a State, the United States can exercise exclusive jurisdiction only when the State consents by ceding jurisdiction, or when such jurisdiction was reserved at the date of the admission of the State. In a Territory, the United States, being the only sovereign, has such exclusive jurisdiction whenever it chooses to exercise it. This offense was committed within the exclusive jurisdiction of the United States because committed in a place in a Territory over which the United States possessed exclusive jurisdiction, any jurisdiction exercised by the territorial government in the Osage Reservation being merely permissive and not extending to this offense.

Any change in the status of the Osage Reservation consequent upon the admission of the State has no effect upon the jurisdiction of the United States courts over an offense committed when the reservation was Indian country and under the exclusive jurisdiction of the United States. (*United States v. Baum, supra*; sec. 13, Rev. Stat.; *Great Northern Railway Company v. United States*, 208 U. S., 452; *United States v. New York Central, &c., Railroad Company*, 153 Fed., 630, 635.)

II.

The Assignments of Error (R., 29).

The first and tenth assignments concern the overruling of a motion for a new trial. It has been repeatedly held that such action is not reviewable by an appellate court. (*Wheeler v. United States*, 159

U. S., 523; *Bucklin v. United States*, 159 U. S., 682, and cases cited.)

The second assignment is objectionable in that it alleges two separate errors and does not comply with the requirements that each error assigned must be set out "separately and specifically." (*Rule 21* of this court; *Turnbull v. Payson*, 95 U. S., 418, 420.)

It first alleges that the defendant objected to being tried at Oklahoma City for an offense committed in the Osage Reservation. No such objection appears in the record and would be without merit if properly presented. (*Cook v. United States*, 138 U. S., 157.)

This assignment next charges error in refusing an application for continuance. This court has said:

* * * the action of the trial court upon an application for a continuance is purely a matter of discretion, and not subject to review by this court, unless it be clearly shown that such discretion has been abused, is settled by too many authorities to be now open to question. (*Isaacs v. United States*, 159 U. S., 487, 489, and cases cited.)

No abuse of discretion is shown. Indeed, the record discloses no overruling of any motion for a continuance. On the contrary, the continuance asked was granted, and the witnesses desired by the defendant were ordered subpoenaed at the expense of the United States (R., 19). Then, when the case is called, "both parties announce ready for trial" (R., 20).

The third assignment recites that the defendant objected to going to trial because of alleged defects in the indictment, and the fourth states that, after a jury was selected and the first witness called, the introduction of any evidence was objected to for a like reason.

It is enough to say that the record does not disclose any such objections. The indictment is not defective even in form. If it were, no such question can now be made. (Rev. Stat., sec. 1025.) There is no ground to suppose that the defendant was taken by surprise or in doubt as to the precise offense with which he was charged. (*Connors v. United States*, 158 U. S., 408.)

The fifth, sixth, seventh, eighth and ninth assignments relate to the action of the court in admitting and rejecting certain evidence and an alleged variance between the testimony and the allegations of the indictment as to the date of the offense, and challenge the sufficiency of the testimony to sustain a verdict. There is no bill of exceptions, although opportunity to prepare and file the same was given (Rec., 29), and the testimony does not appear in the record. It is now too well settled to admit of discussion that such questions will not be considered by this court under such circumstances. (*Suydam v. Williamson et al.*, 20 How., 427; *Storm v. United States*, 94 U. S., 76, 81.) These questions appear only in the assignment of errors, and "an assignment of errors can not be availed of to import questions into a case which the

record does not show were raised and passed on in the court below." (*Missouri Pacific Railway v. Fitzgerald*, 160 U. S., 556, 576; *Harkrader v. Wadley*, 172 U. S., 148; *Metropolitan Railroad Company v. District of Columbia*, 195 U. S., 322.)

The overruling of the motion in arrest of judgment, the subject of the eleventh assignment, is a matter resting in the discretion of the lower court and not subject to review here. (*Street Railroad Company v. Hart*, 114 U. S., 654, 660.)

The judgment of the Circuit Court should be affirmed.

WILLIAM R. HARR,
Assistant Attorney-General.

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PICKETT *v.* UNITED STATES.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF OKLAHOMA.

No. 270. Submitted January 3, 1910.—Decided February 21, 1910.

On the organization of a Territory into a State, Congress may—as it did by the Oklahoma enabling act—transfer the jurisdiction of general crimes committed in districts over which the United States retains exclusive jurisdiction from territorial to Federal courts, and may extend such jurisdiction to crimes committed before and after the enabling act. See *United States v. Brown*, 74 Fed. Rep. 43.

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A statute creating a court to take jurisdiction of crimes will not be construed, if another construction is admissible, so as to leave a judicial chasm; and so held that under the Oklahoma enabling act the Federal court had jurisdiction of certain specified crimes committed after the enabling act was passed and before the State was admitted.

The reason of a law as indicated by its general terms should prevail over its letter when strict adherence to the latter will defeat the plain purpose of the law.

The granting or denying of a new trial is a matter not assignable as error. *Bucklin v. United States*, 159 U. S. 682.

An assignment of error that is double is bad for that reason.

Continuances are within the discretion of the trial court, and, in the absence of gross abuse, the action of the lower court will not be disturbed.

Assignments of error based on overruling objections to sufficiency of the indictment and of admission of any evidence because the indictment is bad cannot be made on writ of error for the first time.

Assignments of error for rejection or admission of evidence cannot be considered in absence of bill of exceptions. *Storm v. United States*, 94 U. S. 76.

THE facts are stated in the opinion.

No counsel appeared for plaintiff in error.

Mr. Assistant Attorney General Harr for the United States.

MR. JUSTICE LURTON delivered the opinion of the court.

This is a writ of error to a judgment of the Circuit Court of the United States for the Western District of Oklahoma, upon a conviction in a capital case, sued out by the plaintiff in error, the defendant below, by authority of the fifth section of the act of March 3, 1891, 26 Stat. 826, 827.

The plaintiff in error, Silas Pickett, a negro, was indicted in the District Court of the United States for the Western District of Oklahoma for the murder of a negro known as Walter, the Kid, within the limits of the Osage Indian Reservation. The indictment was remitted to the Circuit Court for the same

district as required by § 1039, Revised Statutes. This murder was charged as having been committed on October 14, 1907. The State of Oklahoma was admitted to the Union on November 16, 1907. The offense was, therefore, committed before its admission as a State, and for that offense the plaintiff in error was, after such admission, both indicted and convicted in a court of the United States for the Western District of Oklahoma—the Osage Indian Reservation being within that district. The jurisdiction of the court was challenged by motion to quash, by demurrer and by motion in arrest of judgment. Of course, if the offense was not one against the United States, or not committed within the territorial jurisdiction of the District Court for the Western District of Oklahoma, the indictment would be bad, and the court which tried and convicted the plaintiff in error, without jurisdiction. But the crime charged in this indictment was one against the United States. By § 5339 of the Revised Statutes, as amended by the act of January 15, 1897, c. 29, 29 Stat. 487, the crime of murder, when committed within any "place or district or country under the exclusive jurisdiction of the United States," is defined and the punishment provided. This general law was, by § 2145, Rev. Stat., extended "to the Indian Country," when not within one or the other of the exceptions of § 2146.

The averments of the indictment make it plain that the crime charged was committed within a "place or district" at that time exclusively under the jurisdiction of the United States, being Indian Country, not within any State. As it also averred that the plaintiff in error was a negro, and not an Indian, and the person slain a negro and not an Indian, the exceptions made by § 2145, Rev. Stat., do not apply.

The crime was charged to have been committed on October 14, 1907, a date subsequent to the enabling act of June 16, 1906, under which, on November 20, 1907, Oklahoma was admitted to the Union.

The jurisdiction of the District Court of the United States exercised in respect to the indictment and trial of this plaintiff

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in error depends upon the provisions of that enabling act. Such a crime might have been prosecuted in the territorial court for the proper district of the Territory, sitting as a court of the United States and administering the law of the United States in the exercise of its jurisdiction conferred by Congress. *Ex parte Crow Dog*, 109 U. S. 556; *Brown v. United States*, 146 Fed. Rep. 975. But the function and jurisdiction of such territorial courts would naturally terminate upon the Territory becoming a State, and therefore render necessary some provision for the transfer of pending business and jurisdiction in respect of local matters to state courts and of civil and criminal business and jurisdiction arising under the laws of the United States to courts of the United States when they should come into existence. *Forsyth v. United States*, 9 How. 571, 576.

It was, therefore, altogether competent for Congress to provide, as it did in the 14th section of this enabling act, for the transfer of jurisdiction in respect of all crimes against the United States—for the act must be read as applying to crimes under the general criminal law of the United States—to the Federal courts provided by the same act. If this could not be done, the change from a territorial condition to that of a State would operate as an automatic amnesty for crimes committed against the general law of the United States within districts exclusively under its jurisdiction, and not within the jurisdiction of any State, for the court of the State could not be empowered to prosecute crimes against the laws of another sovereignty. *Martin v. Hunter*, 1 Wheat. 304, 337. The power to punish was not lost if the crime was one of the character described and the enabling act might well provide that such crime, committed either before or after the admission of the State, might be prosecuted in the courts of the United States when established within the new State. The subject is elaborately considered and decided by District Judge Marshall in *United States v. Baum*, 74 Fed. Rep. 43.

Section 13 of the enabling act referred to provides "that the State *when admitted* [*italics ours*] shall be divided into

two judicial districts," for the appointment of a district judge, clerk and marshal for each, and that the State should be attached to the Eighth Judicial Circuit. It provides also for the holding of regular terms of both the District and Circuit Courts, with all the powers and jurisdiction of similar courts. The fourteenth section was in these words:

"That all prosecutions for crimes or offenses hereafter committed in either of said judicial districts as hereby constituted shall be cognizable within the district in which committed, and all prosecutions for crimes or offenses committed before the passage of this act in which indictments have not yet been found or proceedings instituted shall be cognizable within the judicial district as hereby constituted in which such crimes or offenses were committed."

There may be some doubt as to whether the section set out should be construed as applying to crimes and offenses committed before and after the passage of the enabling act or only to such crimes committed before and after the admission of the State. The reference to "the passage of this act," in the second clause, would tend to the first construction. But such a construction would leave out of consideration the fact that neither the courts nor the judicial districts referred to would exist until the admission of the State by the express terms of the preceding section, which should be read in connection with the fourteenth section. No construction should be adopted, if another equally admissible can be given, which would result in what might be called a judicial chasm. Under the first interpretation, crimes committed after the passage of this enabling act could not be prosecuted until the admission of the State and the coming into existence of the courts and judicial districts, to which jurisdiction of such crimes was to be transferred. If such crimes could only be prosecuted in courts organized upon the admission of the State there would be an indefinite period during which such crimes might go unpunished. In fact, there elapsed seventeen months between the date of this enabling act and the admission of the State

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and a consequent organization of the districts and courts to which jurisdiction over such crimes was to be transferred. A construction which might result in such deplorable consequences should not be adopted if any more sensible meaning can be reasonably given. The reason of the law, as indicated by its general terms, should prevail over its letter, when the plain purpose of the act will be defeated by strict adherence to its verbiage. Applications of this general rule are shown in *Holy Trinity Church v. United States*, 143 U. S. 457; *Lau Ow Baw v. United States*, 144 U. S. 47, 59; *United States v. Corbett*, 215 U. S. 233, decided at this term. The obvious intention was that this, like the preceding section, should become effective upon the State being admitted, and it should be read as applying to crimes and offenses before and after such admission. But if the section be otherwise construed, the District Court had in either case jurisdiction over this crime, for it was committed after the enabling act, and whether it might have been prosecuted in a territorial court sitting as a court of the United States before the admission of the State of Oklahoma, is not here important. It was not so prosecuted, and when the Territory ceased to be a Territory and became a State the jurisdiction of all such courts terminated, and jurisdiction was properly transferred to the courts of the United States having jurisdiction over the place of the crime.

There are a number of errors assigned. The first and tenth are for error in denying a new trial. The granting or denying of a new trial is a matter not assignable as error. *Bucklin v. United States*, 159 U. S. 682. The second assignment is double, and therefore bad; but it is without merit. The first error included is for overruling an objection to being tried at Oklahoma City. No such objection is shown by the record. The remainder is for denying a continuance. Continuances are within the discretion of the court, and unless great abuse is shown, the action of the court below will not be disturbed. As no bill of exceptions was taken, we have no showing of abuse upon which the action of this court may be invoked.

The third and fourth errors assigned are for overruling an objection made to the sufficiency of the indictment and to the admission of any evidence because the indictment was bad. No such objection is shown by the record. The indictment is not in form bad, nor vague, but charges the crime of murder with great particularity. There seems to have been no reason for doubt as to the crime charged. Besides, objections of this character cannot be made upon writ of error for the first time.

Aside from the question of jurisdiction, considered heretofore, the remaining assignments are for alleged errors in admitting or rejecting evidence. But as no bill of exceptions was taken, these assignments cannot be considered. *Storm v. United States*, 94 U. S. 76.

Judgment affirmed.
